

LEGISLATIVE RESEARCH COMMISSION

STATUTORY LIENS AND FARM PRODUCTS SECURITY INTERESTS

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REPORT TO THE
1983 GENERAL ASSEMBLY
OF NORTH CAROLINA
1984 SESSION

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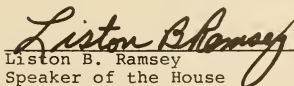


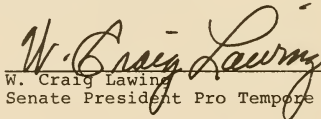
June 7, 1984

TO THE MEMBERS OF THE 1983 GENERAL ASSEMBLY:

This is the Legislative Research Commission's report to the 1983 General Assembly, Second Regular Session (1984), on farm products security interests. This report is made pursuant to Section 1 (42) of 1983 Session Laws Chapter 905 (HB 1142), and pursuant to Resolution 53 (SJR 22). It was prepared by the Legislative Research Commission's Statutory Liens and Farm Products Security Interests Study Committee, and is transmitted by the Legislative Research Commission for your consideration.

Respectfully submitted,


Liston B. Ramsey
Speaker of the House


W. Craig Lawing
Senate President Pro Tempore

Cochairmen
Legislative Research Commission

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INTRODUCTION

The Legislative Research Commission (LRC), created by Article 6B of General Statutes Chapter 120, is authorized at the direction of the General Assembly "to make or cause to be made such studies of and investigations into governmental agencies and institutions and matters of public policy as will aid the General Assembly in performing its duties in the most efficient and effective manner" and "to report to the General Assembly the results of the studies made," which reports "may be accompanied by the recommendations of the Commission and bills suggested to effectuate the recommendations." G.S. 120-30.17. The Commission is chaired by the Speaker of the House and the President Pro Tempore of the Senate, and consists of five Representatives and five Senators, who are appointed respectively by the Cochairmen. G.S. 120-130.10(a). The membership of the Commission is listed in Appendix A.

The 1983 General Assembly, in Resolution 53 (SJR 622) of the 1983 Session Laws gave discretionary authority to the Legislative Research Commission to "...study security interests in farm products to determine whether current law adequately protects buyers of farm products that are subject to a security interest, selling agents of these farm products, and lenders." A copy of the ratified bill is in Appendix C.

Pursuant to G.S. 120-30.10(b) and (c), the Commission Co-chairmen appointed a Study Committee consisting of ten (10) members; five Senators, five Representatives, and an LRC member to be in charge of the study. One Senator and one Representative

were designated as cochairmen of the Committee. See Appendix B for the Committee membership.

This report presents a background and legislative history of the study, a summary of the Committee proceedings, the Committee findings, and its recommendations.

LEGISLATIVE BACKGROUND

This study encompasses two distinct areas of law. They are: (1) the Uniform Commercial Code (U.C.C.) provisions relating to security interest in farm products, and (2) Statutory liens, the provisions for which are outlined in Chapter 44A of the General Statutes. The decision to consolidate both topics into one study was made by the Legislative Research Commission. This report will focus only on the U.C.C. aspect of the study. The time and the budget restraints imposed upon the Committee have made it necessary to temporarily defer consideration of the statutory liens aspect of the study. The Committee intends to address that matter in its report to the 1985 General Assembly.

The U.C.C. aspect of the study resulted from the consideration of three bills which were introduced in the Senate during the first session of the 1983 General Assembly. The bills were S.B. 483, S.B. 622 and S.B. 676. A summary of each bill follows.

Senate Bill 483

Senator Bill 483 "AN ACT REGARDING SECURITY INTERESTS IN CERTAIN FARM PRODUCTS" was introduced by Senator Jenkins on May 12, 1983. The bill proposed to amend that portion of the U.C.C. which provides protection for buyers under the Code, N.C. Gen. Stat. §25-9-307, by adding a new subsection (4) to the section.

The proposed new subsection (4) was intended to be an exception to the general provisions of the existing subsection (1). Subsection (1) of N.C. Gen.Stat. §25-9-307 reads:

- (1) A buyer in ordinary course of business...other than a person buying farm products from a person engaged in farming operation takes free of a security interest created by his seller even though the security interest is perfected even though the buyer knows of its existence. (emphasis added)

S.B. 483, if enacted, would have brought certain operations which are related to farm products and farm operations under the protection of subsection (1). Those operations included:

- (1) Buyers of livestock sold at public auction through a public livestock market operating under Article 35 of N.C. General Statutes, Chapter 106, and buyers of tobacco sold at public auction through a tobacco warehouse regulated by Article 39 and 40 of N.C. General Statutes, Chapter 106; and
- (2) grain dealers licensed under Article 53 of N.C. General Statutes, Chapter 106, and federally licensed grain stores.

The bill would have also provided that neither a livestock market nor a tobacco warehouse would be liable to the secured party for selling livestock or tobacco that were subject to a perfected security interest unless market or the warehouse was notified, by certified or registered mail, of the security interest.

S.B. 483 was referred to Senate Judiciary Committee I. There was considerable objection to this bill by bankers, buyers

warehousemen, and farmers. The first session of the 1983 General Assembly adjourned before the Judiciary Committee took any action on the bill.

Senate Bill 622

S.B. 622 "AN ACT REGARDING SECURITY INTERESTS IN FARM PRODUCTS" was introduced by Senator Jenkins on June 15, 1983, and referred to Senate Judiciary II Committee. The original bill proposed to amend N.C. Gen. Stat. §25-9-401, Part 3 of Article 1 of N.C. General Statutes, Chapter 106, and N.C. Gen Stat. §25-9-307.

N.C. Gen. Stat. 25-9-401 contains, among other things the proper place to file a security interest in various types of collateral in order to "perfect" them, i.e., taking the steps necessary to assure that an interest in personal property cannot be defeated by insolvency proceedings or in general by creditors. The relevant provision of N.C. Gen. Stat. §25-9-401 with which S.B. 622 was concerned is subsection (1)(a). It reads:

"(1) The proper place to file in order to perfect a security interest is as follows:

(a) when the collateral is equipment used in farming operations, or farm products, or accounts or general intangibles arising from or relating to the sale of farm products by a farmer, or consumer goods, then in the office of the register of deeds in the county of the debtor's residence or if the debtor is not a resident of this State then in the office of the register of deeds in the county where the goods are kept, and in addition when the collateral is crops growing or to be grown in

the office of the register of deeds in the
county where the land is located. . . ."

The bill, if enacted, would have required additional steps be taken in order to perfect a security when a collateral is a farm product. In substance, it would have required that starting on January 3, 1984, and then every 3 years thereafter all secured parties would be required to file with the Board of Agriculture a list of all farm product liens recorded under subsection (1)(a). The sole purpose of such filing would have been to enable the Board to mechanically reproduce the reports and transmit them to certified trade associations or individuals on or after the second business day of each calendar quarter. S.B. 622 would have also required that on the first business day of each calendar quarter all secured parties file with the Department of Agriculture all farm product liens filed under subsection (1)(a). The sole purpose for such quarterly filing with the Department would have been for "mechanically reproducing said reports to be transmitted to certified trade associations or individuals on or after the second business day of each calendar quarter."

The amendment to Part 3 of Article 1 of N.C. General Statutes, Chapter 106, which contains the provisions governing the Board of Agriculture, was generally intended to add a new section §106-22 outlining the rules governing the maintenance and dissemination of farm product lien records, and the certification of trade associations and individuals.

Finally the original S.B. 622 proposed to amend N.C. Gen. Stat. §25-9-307 to provide that a purchaser of farm products buying from a person engaged in farming operation "must issue a check or payment jointly to the debtor and the secure parties"

who were to be listed in the calendar quarterly reports unless the buyer was notified by the secured party to issue a single check to the seller.

When the original S.B. 622 was considered by Senate Judiciary II Committee, the Committee objected to the filing of the farm product lien with the Department of Agriculture. A Committee substitute proposed by Senator Elton Edwards was adopted on July 1, 1983. The substitute proposed to add a sentence to the end of N.C. Gen. Stat. §25-9-401(1)(a) to require central filing of security interests in "farm products, crops growing, or crops to be grown" in the Security of State's Office. The substitute further required that the Secretary of State's Office index the liens "in such a manner as to facilitate retrieval of those security interests by the name of the county, and by the name of the debtor."

Finally the substitute to S.B. 622 proposed to amend Article 19A of N.C. General Statutes, Chapter 106. That section deals with the maintenance of records from the sale of farm products. The proposed new section N.C. Gen. Stat. §106-202.7 proposed that a person engaged in farming operations" make jointly to the debtor and the secured parties, unless the secured party gives written approval that a single party check may be issued in the name of the seller."

The Committee Substitute was favorably reported and adopted by the full Senate on July 5, 1983. It was placed on the calendar for July 7, 1983, but was withdrawn from the calendar on July 6, and rereferred to the Senate Appropriations Committee. The primary concern was with the appropriate location of central filing i.e., whether the filing should be with the Department of Agriculture,

or in the Office of the Secretary of State. The Appropriations Committee ultimately decided that the matter should be studied.

On July 21, 1983, the Senate adopted a joint resolution "authorizing the Legislative Research Commission to study security interest in farm products." On the same day the Senate passed the resolution and sent it to the House of Representatives where it was referred to the House Appropriations Committee. The Committee reported it favorably on July 22. The House passed the Resolution without amendment on the same date; and it was ratified as Resolution 53 of the 1983 Session Laws.

Senate Bill 676

The third bill introduced during the first session of the 1983 General Assembly concerning security interests in farm products is S.B. 676 "AN ACT REGARDING SECURITY INTERESTS IN CERTAIN LIVESTOCK." It was introduced on July 12, 1983, by Senator Plyler and others.

This bill, like S.B. 483, proposed to amend N.C. Gen. Stat. §25-9-307. It proposed to add a new §25-9-307(4) to provide that a buyer in the ordinary course of business who buys livestock sold through a public livestock market, a livestock dealer, buying station or an animal food manufacturer takes free of a security interest in the livestock even if the interest is perfected. The bill would exempt a seller from liability to a secured party unless the secured party gave notice in a specified form to the seller before the sale. It would prohibit a secured party who gave proper notice of his security interest from seeking recovery against a seller until he had exhausted all legal rights against

the debtor. Finally S.B. 676 would have allowed a secured party the right to inspect livestock held for sale and the seller's records to determine whether the livestock is subject to a security interest held by him.

The bill was first referred to the Special Ways & Means Committee, and was favorably reported on July 13. It was placed on the calendar for July 15th and 18th, but was withdrawn and re-referred to the Special Ways and Means Committee on July 18. No further action was taken on the bill.

U.C.C. Issues to be Studied

As was indicated above S.B. 622 was finally enacted by the General Assembly as Resolution 53 of the 1983 Session Laws. The Resolution authorizes the Legislative Research Commission to "study security interests in farm products." In doing so the Commission may consider the provisions of S.B. 622 as it was originally introduced and the Committee Substitute to that bill as it was adopted, as well as considering the provisions of S.B. 676. The three bills taken together contain numerous issues. However, the specific issues which this Study Committee is required to address in the U.C.C. aspect of the study are:

- (1) Does the current law adequately protect:
 - (a) the buyers of farm products that are subject to security interests?
 - (b) the selling agents of farm products? and
 - (c) the financial institutions that are in the business of lending funds to persons engaged in farming operations?
- (2) Should the existing recording system for security

interests in farm products be modified to permit a central registry of such interests?

- (3) If a central filing system is needed, which is the appropriate agency of government to administer the system, the Department of Agriculture or the Secretary of State's Office?

OVERVIEW OF THE LAW

Under the Uniform Commercial Code (UCC) agricultural crop and livestock liens are treated different from other liens. This different treatment creates confusion as to how these liens are perfected and executed.

The problem of agricultural crop and livestock liens has its origin in the Uniform Commercial Code, the set of laws which, with some minor amendments and modifications, basically governs all commercial transactions within 49 of the 50 states. Specifically the problem is caused by the concatenate operation of two sections of the UCC. The first, section 9-307(1) (N.C. Gen. Stat. §25-9-307(1)) provides in pertinent part:

"A buyer in ordinary course of business other than a person buying farm products from a person engaged in farming operations takes free of the security interest created by his seller even though the security interest is perfected and even though the buyer knows of its existence."

The legal problem raised by this statutory provision is that, contrary to the general rule of the section, a person engaged in farming operations does not take free of a security interest created by the farmer. If a bank holds a perfected security interest in all of a farmers' livestock or crops and the farmer sells those products for example to a livestock business or a grain dealer, the livestock business

or the grain dealer though a buyer in the ordinary course of business and a good faith purchaser cannot cut off the bank's security interest. All subsequent purchasers of the livestock or the crops, in fact take subject to the banks' interest. Further, the law does not require the buyer to be notified prior to the purchase. Consequently under G.S. 25-9-307 if the farmer becomes insolvent the bank could legally turn to an innocent buyer such as the livestock business or grain dealer to recover the amount of the debts. This means that the law exposes the business to double payment for the same product.

The other section of the UCC which is pertinent here, section 9-401 (N.C. Gen. Stat. §25-9-401), deals with the filing of liens. When each of the individual states enacted the code, it had the opportunity to choose between several alternatives for filing locations, or when the collateral was crops growing or to be grown the financing statement could also be filed in the county where the land was located. Alternatively or in addition to these local filing sites, a state could opt for a central filing system usually in the Secretary of State's Office.

North Carolina elected to require local filing for crops. Thus in this State when the collateral is "farming equipment or farm products"* the proper place to file in order to perfect a security interest in these collaterals is "in the office of the register of deeds in the county of the debtor's residence" and additionally when the collateral is crops growing or to be grown the filing has to be made in the office of the register of deeds in the county where the land is located. See N.C. Gen.Stat. §25-9-401.

*N.C. Gen.Stat. §25-9-109 classify farm products as "goods"... if they are crops or livestock or supplies used or produced in farming operations or if they are products of crops or livestock in their unmanufactured states..., and if they are in the possession of a debtor engaged in raising, fattening, grazing or other farm operations."

COMMITTEE PROCEEDINGS

The Committee held its first meeting on Friday November 18, 1983. At that meeting the representatives of the Secretary of State's Office informed the committee that central filing is being followed in many states on crop liens. The committee was informed that the Secretary of State's Office was implementing a new system to accomodate central filing if central filing became the law of the state. The various aspects of that system were explained to the committee.

Interested persons expressed support for the central filing of crop liens. Among the concerns expressed was that when farm product liens are not filed centrally the search for such liens become impractical and expensive for buyers. Furthermore, since there was no requirement in the law that the buyer be notified of the lien prior to the purchase this puts the buyer at the disadvantage, and gives an unusual amount of protection to the lender.

The grain dealers highlighted the difficulty that their industry had in obtaining information on crop liens that have been filed. They informed the committee that their primary concern is to be able to discover the liens in order to avoid having to pay twice for the same products.

At the end of the first meeting the committee determined from what the various interested persons said that because of the existing provisions of the law the buyers of farm products were faced with a significant problem when dealing with products that are subject to security interests. The existing statutory provision for the filing of security interests did not provide adequate protection against the potential for having to pay twice

for the same farm product. The Committee concluded that a central filing system should be implemented, and that that system should be administered by the Office of the Secretary of State.

Concern was expressed at the first meeting that persons who deal in livestock such as public livestock markets, livestock dealers, etc., faced problems similar to the problems of the buyers of other farm products. The Committee decided that the concerns of the livestock interests should be heard; and it decided that a public hearing should be held.

The Committee held a public hearing on January 26, 1984. At the public hearing the Committee was urged, among other matters, to consider the problems facing dealers in all areas of agricultural commodities. The problem confronting individuals in the livestock industry, namely the potential of being required to pay twice for livestock, was particularly highlighted. Following the public hearing the committee held a regular meeting in the afternoon of January 26, 1984. This meeting was devoted largely to considering legislative response to the concerns of the livestock business. The primary concern was that the dealers, livestock markets, and others in the livestock industry were being exposed to double payment when they sold or dealt in livestock which had security interest in them. The Committee finally decided that the law should be modified to allow the individuals dealing with livestock to be notified whenever they deal in livestock that are subject to security interest.

A comprehensive record of the Committee's deliberations at each meeting is available for inspection from the legislative library.

FINDINGS

The Committee finds that:

- (1) N. C. Gen. Stat. §25-9-307 permits secured lenders to enforce liens against a purchaser of farm products specifically crops and livestock even if the purchaser:
 - (a) lacks knowledge that the sale of such products to him is in violation of the ownership rights or security interest of such lenders in such farm products,
 - (b) lacks any practical method for discovering the existence of such a security interest at the time the sale is completed, or
 - (c) lacks any means to assure that the payment of the debt owed to such lender has been made;
- (2) the law permits purchasers of crops and livestock to be subjected to double payment for the cost of such products, first at the time of purchase, and second when the seller fails to pay a debt which has been secured by the crop or livestock and the holder of the security interest levies against the purchaser;
- (3) an unfair burden is placed upon purchasers of farm products, such as grain dealers, public livestock markets, livestock dealers, buying stations and animal food manufacturers, because of exposure to double payment. This can potentially inhibit the free competition in the market for farm products by discouraging purchasers from dealing with farm sellers who have defaulted or may default on loans;
- (4) the problems confronting the purchasers of farm products particularly crops could be substantially reduced if the

existing statutory provisions regulating the filing of security interests were modified to require that crop liens be filed at a central location in addition to the counties where the debtors may reside; such a central filing system will facilitate an inexpensive method of searching and discovering farm products that are subject to security interests; and

- (5) the present system results in the exposure of public livestock markets, livestock dealers, buying stations and animal food manufacturers to double payment for livestock which are subject to security interests and could be eliminated if the existing statutory provisions were amended to require notice of the security interests prior to the time the livestock is sold.

RECOMMENDATIONS OF THE COMMITTEE

After careful consideration of the matters dealing with agricultural products the committee makes the following recommendations:

- (1) The General Assembly should consider legislation to implement a central system for the filing of crop liens. Such legislation should require that the liens be filed in the office of the Secretary of State. The proposed legislation to implement this system is in Appendix D-1. A fiscal note is attached.
- (2) The General Assembly should consider legislation to provide more adequate protection for public livestock markets, livestock dealers, buying stations, animal food manufacturers, and rendering plants that are regulated by Chapter 106 of the General Statutes. The proposed legislation to implement this protection is in Appendix D-5. A fiscal note is included.

LEGISLATIVE RESEARCH COMMISSION

MEMBERSHIP

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Senator Helen Rhyne Marvin
Senator William W. Staton
Senator Joseph E. Thomas
Senator Russell Walker

Representative Liston Ramsey, Speaker - Co-chairman
Representative John T. Church
Representative Bruce Ethridge
Representative Chris S. Barker, Jr.
Representative John J. Hunt
Representative Margaret Tennille

STATUTORY LIENS AND FARM PRODUCTS SECURITY INTEREST

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GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1983
RATIFIED BILL

RESOLUTION 53
SENATE JOINT RESOLUTION 622

A JOINT RESOLUTION AUTHORIZING THE LEGISLATIVE RESEARCH COMMISSION TO STUDY SECURITY INTERESTS IN FARM PRODUCTS.
Be it resolved by the Senate, the House of Representatives concurring:

Section 1. The Legislative Research Commission may study security interests in farm products to determine whether current law adequately protects buyers of farm products that are subject to a security interest, selling agents of these farm products, and lenders. The Commission may examine the recording system for security interests in farm products to determine whether a central registry of these security interests is needed and, if so, the appropriate State agency to administer this registry. In conducting its study the Commission may consider the provisions of Senate Bill 622 as it was originally introduced in the 1983 Session and the committee substitute that was adopted for that bill, as well as the provisions of Senate Bill 676.

Sec. 2. The Commission shall make a final report of its findings and recommendations to the 1985 General Assembly and may make an interim report to the 1983 General Assembly, Second Session 1984.

Sec. 3. This resolution is effective upon ratification. In the General Assembly read three times and ratified, this the 22nd day of July, 1983.

JAMES C. GREEN

James C. Green
President of the Senate

LISTON B. RAMSEY

Liston B. Ramsey
Speaker of the House of Representatives

SESSION 1983

ST: Crop liens filed with Secretary of State

INTRODUCED BY:

PROPOSED BILL

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE FOR THE CENTRAL FILING OF SECURITY
3 INTERESTS IN CROPS.
4 The General Assembly of North Carolina enacts:
5 Section 1. G.S. 25-9-401(1) (a) is rewritten to
6 read:
7 " (a) When the collateral is equipment used in farming
8 operations, farm products, accounts or general intangi-
9 bles arising from or relating to the sale of farm
10 products by a farmer, or consumer goods, then in the
11 office of the register of deeds in the county of the
12 debtor's residence if the debtor is a resident of this
13 State, but in the office of the register of deeds in
14 the county where the goods are kept if the debtor is
15 not a resident of this State. When the collateral is
16 crops growing or to be grown, an additional filing must
17 be made in the office of the Secretary of State.

18 Sec. 2. G.S. 25-9-401 is amended by renumbering the
19 subsection (5) as subsection (6), and by adding a new
20 subsection (5) to read:

21 " (5) A filing which is made in the proper place in
22 this state prior to January 1, 1985, continues to be effec-
23 tive even though under this section the place of filing has
24

1 been changed. The effectiveness of any financing statement
2 or continuation statement filed prior to January 1, 1985,
3 may be continued by a continuation statement or amended as
4 permitted by the Uniform Commercial Code, except that if
5 this section requires a filing in an office where there was
6 no previous financing statement, a new financing statement
7 meeting the requirements of this section, shall be filed in
8 that office. Such new financing statement operating as a
9 continuation statement may be filed within six months before
10 the perfection of the security interest would otherwise
11 lapse. Any such financing statement may be signed by either
12 the debtor or the secured party. It shall identify the
13 original financing statement and any amendment or continua-
14 tion thereof, state the office where and the date when each
15 filing was made, and state the filing number thereof."

16 Sec. 3. G.S. 25-9-402(1) is amended by rewriting the
17 third sentence to read:

18 "When the financing statement covers crops growing or
19 to be grown, the statement must indicate that the collateral
20 is or includes crops, must contain a description of the real
21 estate concerned, and must contain the county of the debt-
22 or's residence, or where the debtor is not a resident of
23 this state the county where the crops are growing or to be
24 grown."

25 Sec. 4. This act shall become effective January 1,
26 1985.

Fiscal Research Division
March 1, 1984

Fiscal Note

Proposed Draft

Short Title: Central Filing of Security Interests
in Crops

Referred To: Legislative Research Commission on the Study
of Statutory Liens and Farm Products Security

Purpose: To provide for the central filing of security
interests in crops by requiring that they be
filed with the Office of the Secretary of State.

The proposed legislation makes the following changes in the
law on the filing of security interests on crops growing or
to be grown.

- (a) eliminates the requirement for filing a security
interest with the office of register of deeds in
the county where the land is located when the
collateral is crops growing or to be grown;
- (b) requires filing with the office of the Secretary
of State when the collateral is crops growing or
to be grown
- (c) requires that the statement filed indicate that the
collateral is or includes crops, contain a description
of the real estate concerned and contain the county
of the debtor's residence

Fiscal Effect: The estimated cost to the office of the
Secretary of State to implement and maintain
the central filing of security interests on crops growing
and to be grown is \$81,500 annually. This cost is based
on an estimated filing of 50,000 documents per year and does
not include the number of searches which would be required
by lenders and buyers of agricultural commodities.

A breakdown of the costs are:

Personnel:	\$42,160
3 Data Entry Operator III	
Equipment:	15,355
3 staff computer terminals	
2 terminals for public use	
1 online printer	
4 work stations	
3 desks and chairs	

State Computer Center Charges:	\$18,000
Supplies and Maintenance Contracts	1,700
*Development Costs:	4,290
Modification of UCC System	
Writing Program	

*Software modifications would be one time programming expenses but recurring expenses for storage space with the State Computer Center may offset offset that.

Of some consequence may be the loss of an undeterminable amount of revenue which the counties' register of deeds offices collect from the \$4.00 fee charged for the filing of crop liens as noted in (a) above.

Technical Consideration: The elimination of the requirement for a lienholder to file with the office of the register of deeds in the county where the land is located, and in not requiring the filing to include the county where the land is located, when collateral is crops growing or to be grown, may pose some problem for interested parties in determining where to search for a lien and in the office of the Secretary of State's indexing and retrieval of lien information on out of state residents.

Information Provided By: Louise Young 

Approved By: 

LY:djb

SESSION 19 83

ST: Protection of Buyers of Livestock

INTRODUCED BY:

PROPOSED BILL

Referred to:

A BILL TO BE ENTITLED

AN ACT TO PROVIDE PROTECTION FOR PERSONS WHO BUY CERTAIN
LIVESTOCK THAT IS SUBJECT TO A SECURITY INTEREST AND
FOR LIVESTOCK BUSINESSES THAT SELL LIVESTOCK THAT IS
SUBJECT TO A SECURITY INTEREST.

The General Assembly of North Carolina enacts:

Section 1. G.S. 25-9-307 is amended by adding a
new subsection (4) to read:

"(4) Notwithstanding subsection (1), if livestock
subject to a security interest is sold through a
livestock business a buyer of the livestock takes free
of the security interest. In addition the livestock
business is not liable to the holder of the security
interest unless written notice of the security interest
was given to the livestock business prior to the time
of the sale.

The written notice shall contain the following
information:

- (1) the full name and address of the debtor,
- (2) the full name and address of the secured party,
- (3) a description of the livestock subject to the
security interest,

1 (4) the date and location of the filing of the
2 security interest,

3 (5) the date and signature of the secured party, and

4 (6) the date and signature of the debtor.

5 A debtor who creates a security interest in his live-
6 stock must provide the secured party with the names of
7 individuals to whom the livestock may be sold or a written
8 list of livestock businesses through which the livestock is
9 likely to be sold at the time the security interest is
10 created if the secured party so requests. If the debtor
11 gives the list to the secured party, the debtor may not sell
12 livestock subject to the security interest through a live-
13 stock business that does not appear on the list unless the
14 secured party has given prior written permission to the
15 debtor to sell the livestock through a livestock business
16 that does not appear on the list. If no written permission
17 was given, and the livestock was sold through a livestock
18 business that did not appear on the list, the debtor must
19 satisfy the debt within 15 days after the date of the sale.
20 A debtor who sells to a buyer in violation of this section
21 shall be guilty of a general misdemeanor.

22 A livestock business must issue a check for payment
23 jointly to the debtor and to the secured parties from whom
24 he has received prior written notice of the security inter-
25 est as provided by this subsection.

26 As used in this subsection, "livestock business" means
27 a public livestock market, a livestock dealer, a buying
28

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1 station, an animal food manufacturer, or a rendering plant
2 regulated by Chapter 106 of the General Statutes."

3 Sec. 2. This act shall become effective January 1,
4 1985.

Fiscal Research Division
March 1, 1984

Fiscal Note

Proposed Draft

Short Title: Protection of Buyers of Livestocks

Referred To: Legislative Research Commission on the Study of
Statutory Liens and Farm Products Security

Purpose: Generally, a bank or other lending institution will loan money to a farmer to raise livestock. The bank then takes a lien or a security interest in the livestock. The livestock may be sold to a public livestock market operator, or a livestock dealer who in turn will sell it to some other person. On occasions, the farmer becomes insolvent and unable to pay the debt owed to the bank. When this occurs, the bank will go against the livestock market operator or the livestock dealer to satisfy this debt. The end result is that these entities can wind up having to pay twice for the same livestock.

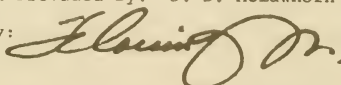
This proposed bill is intended to avoid such occurrences. It contains three provisions which attempt to address the problem:

1. If the livestock is sold at a livestock business entity regulated by Chapter 106 of the General Statutes the "Department of Agriculture", whoever has a lien, i.e. a security interest in the livestock, must notify the business of that interest.
2. The bill assures that the livestock business will not be held liable to the holder of the security interest when the livestock is sold through that business and the business had no prior knowledge of the security interest.
3. The bill will require that when livestock is sold through the livestock market or the livestock dealer that payment is made jointly to the debtor and to the secured party, i.e. the bank or other lending institution.

No additional responsibilities or cost will be placed upon the Office of the Secretary of State or any other state agency. The bill will, however, require that both the debtor (farmer) and the lending institution furnish additional information when dealing with livestock markets, livestock dealers, and other livestock businesses.

Information Provided By: J. D. McLawhorn

Approved By:



JDM:mab

